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Date of Decision: 13th October 1995

SPECIAL CIVIL APPLICATION NO. 6573 of 1990 with
SPECIAL CIVIL APPLICATION NO. 7727 of 1990

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No

2. To be referred to the Reporter or not? No

3. Whether their Lordships wish to see the fair copy of judgment? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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Shri D.U. Shah, Advocate, for the Petitioners
(in both matters)

Shri D.N. Patel, Asst. Govt. Pleader, for Respondents Nos. 1 and 2 in Special Civil Application No. 6573 of 1990 and for Respondents Nos. 1 to 3 in Special Civil Application No. 7727 of 1990.

Shri J.R. Nanavaty, Advocate, for Respondent No.3 in Special Civil Application No. 6573 of 1990 and for Respondent No. 4 in Special Civil Application No. 7727 of 1990

CORAM: A.N. DIVECHA, J.
(Date: 13th October 1995)

ORAL JUDGMENT

The very same orders are under challenge in both these petitions. The subject-matter of both these petitions is also the same. The petitioner of Special Civil Application No. 6573 of 1990 (the first petition for convenience) is the father of the petitioners of Special Civil Application No. 7727 of 1990 (the second petition for convenience). Common questions of law and fact are found arising in both these petitions. I have therefore thought it fit to dispose of both these petitions by this common judgment of mine.

2. The facts giving rise to this petition move in a narrow compass. For the sake of convenience I shall refer to the petitioner of the first petition as the father and the petitioners of the second petition as his children. The father filed his declaration in the prescribed form under sec. 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief). It came to be processed by the Competent Authority at Rajkot (respondent No.1 in each petition). It was claimed before him that the property was a joint Hindu family property and the same was partitioned amongst its co-owners by means of a partition memorandum executed on 3rd September 1975. Its copy is at Annexure A to the second petition. Respondent No.1 in each petition accepted the say of the father and, by his order passed on 30th November 1978 under sec. 8(4) of the Act, came to the conclusion that the holding of the father was not in excess of the ceiling limit for the purposes of the Act. Its copy is at Annexure B to the second petition. It may be noted that the petitioners of the second petition are the son and the daughter of the petitioner of the first petition. Petitioner No.1 is the son and petitioner No.2 is the daughter. It appears that the son served a notice to respondent No.1 in each petition on 17th February 1980 under sec. 26 of the Act for selling the property to one Mohanbhai Premjibhai. By his communication issued on 4th March 1980, respondent No.1 in each petition informed the son that the State Government was not inclined to purchase the subject-matter of the said notice. A copy of the aforesaid communication of 4th May 1980 is at Annexure C to the second petition. Pursuant thereto, the petitioner appears to have sold one parcel of land bearing Plot No. 10 of Survey No. 394 admeasuring 1119.1 square yards (equivalent to 935.32 square meters) situated in Rajkot (the land in question for convenience). Pursuant thereto, the son sold the land in question to Mohanbhai Premjibhai as mentioned in the communication at Annexure C to the second petition. It appears that respondent No.3 of the first petition who is incidentally respondent No.4 in the second petition purchased it from said Mohanbhai Premjibhai after obtaining the necessary permission under sec. 26 of the Act from respondent No.1 in each petition. It appears that the order at Annexure B to the second petition came to the notice of the concerned officer of the State of

Gujarat (respondent No.3 of the second petition). He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. Apropos, a show-cause notice came to be issued to the father on 2nd March 1987. He appears to have filed his reply thereto on 23rd March 1987. He also appears to have submitted his written representation on 18th April 1987. He also appears to have made some further representation on 26th May 1987. The hearing was kept on 10th June 1987 and he thought that it was not necessary for him to remain present in view of his reply to the show-cause notice and his aforesaid representations as transpiring from the order passed by and on behalf of respondent No.3 to the second petition. Thereafter, by the order passed on 27th January 1988 by and on behalf of respondent No.3 of the second petition, the order at Annexure B to the second petition came to be revised and it was declared that the holding of the father was in excess of the ceiling limit by 977.21 square meters and the matter was remanded to respondent No.1 in each petition for proceeding further according to law. A copy of the aforesaid order passed by and on behalf of respondent No.3 of the second petition is at Annexure D thereto. Pursuant thereto, respondent No.1 in each petition took up the matter and, by his order passed on 29th February 1988, declared the holding of the father to be in excess of ceiling limit by 437.81 square meters. Its copy is at Annexure C to the first petition and at Annexure E to the second petition. The father was aggrieved thereby. He therefore carried the matter in appeal before respondent No.2 in each petition under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-24 of 1988. By the order passed on 20th June 1988 in the aforesaid appeal, respondent No.2 in each petition dismissed it. Its copy is at Annexure D to the first petition and at Annexure F to the second petition. It may be mentioned that after dismissing the father's appeal, respondent No.2 in each petition modified the order passed by respondent No.1 and declared the holding of the father to be in excess of the ceiling limit by 977.21 square meters. Pursuant thereto, respondent No.1 in each petition, by his communication of 28th July 1988, conveyed to the father the final statement under sec. 9 of the Act. Its copy is at Annexure G to the second petition. Pursuant thereto, a notification under sec. 10(3) of the Act appears to have been issued on 13th March 1990 and a notice under sec. 10(5) of the Act appears to have been issued on 13th July 1990 calling upon the father to hand over possession of the excess land in terms of the order at Annexure D to the first petition and at Annexure F to the second petition. The aggrieved petitioners have thereupon approached this court by means of these two separate petitions for questioning the correctness of the order at Annexure D to the second petition and the order at Annexure C to the first petitio (equivalent to Annexure E to the second petition) as affirmed in appeal by the appellate order at Annexure D to the first petition (equivalent

to Annexure F to the second petition) and all consequential actions.

3. It is difficult to accept the submission urged before me by Shri Shah for the petitioners that the revisional powers under sec. 34 of the Act could not have been exercised after passage of nearly 8 1/2 years from the date of the order at Annexure B to the second petition. It becomes clear therefrom that the said order was passed as early as on 30th November 1978 and the show-cause notice for its revision was issued as late as on 2nd March 1987, nearly 8 1/2 years from the date of the order sought to be revised. In this connection, a reference deserves to be made to the binding Division Bench ruling of this Court in the case of Haresh Kantilal Vora v. Competent Authority and Additional Collector, Rajkot and Another reported in 1992(2) G.L.H. 424 as relied on by learned Assistant Government Pleader Shri Patel for the contesting respondents. It has been held therein that mere lapse of time, without anything more, would not make the exercise of revisional powers under sec. 34 of the Act to be unreasonable. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me.

4. It is true that pursuant to the order at Annexure B to the second petition, the son served notice to respondent No. 1 under sec. 26 of the Act indicating therein that he wanted to sell the land in question to the predecessor-in-title of respondent No.4 to the second petition. By the communication issued by respondent No.1 in each petition on 4th March 1980 at Annexure C to the second petition, respondent No.1 indicated to the son that the property in question was not intended to be purchased by the State Government. Pursuant thereto, the land in question was sold by the son to the person named therein. To that extent, the equities between the parties came to be changed.

5. It is however found by and on behalf of respondent No.3 of the second petition that the total holding of the petitioner as on 17th February 1976 was 2477.21 square meters. The aforesaid property sold by the son with permission from respondent No.1 of each petition would comprise of 935.32 square meters. Deducting that area from the holding of the father, the balance would come to 1541.89 square meters. This area would be sufficient to enable the father to surrender the land declared surplus under the Act. It would have been a different case if the father had sold away or disposed of his entire holding or that he had raised construction on all the vacant lands during the intervening period. If it would have been so, recourse could have been made to the ruling of this court in the case of Jayantilal Kasalchand Shah v. State of Gujarat and Another reported in 1994(2) Gujarat Current Decisions 83 explaining the aforesaid Divison Bench ruling of this court in the case of

Haresh Kantilal Vora (supra). Unfortunately for the petitioners, it is not so. In that view of the matter, delay in exercise of powers under sec. 34 of the Act after a lapse of nearly 8 1/2 years would pale into insignificance in view of the aforesaid Division Bench ruling of this court in the case of Haresh Kantilal Vora (supra).

6. I however agree with learned Advocate Shri D.U. Shah for the petitioners in his submission to the effect that respondent No.3 of the second petition was not justified in declaring the holding of the father to be surplus by a particular quantum when respondent No.1 had not examined the case from all possible angles in his order of 30th November 1978 at Annexure B to the second petition. As rightly submitted by learned Advocate Shri Shah for the petitioners, the matter ought to have been remanded to the Competent Authority without anything more for restoration of the proceeding to file and for his fresh consideration in the light of the remand. This is so because, it is found from the impugned order of respondent No. 1 after remand at Annexure C to the first petition (equivalent to Annexure E to the second petition), that one property admeasuring 530.40 square meters was found constructed on 17th February 1976 when the Act came into force. The area of that property will have to be excluded from the holding of the father in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta. v. State of West Bengal and Others reported in AIR 1992 SC 1567. That is exactly what respondent No.1 in each petition has done in his order at Annexure C to the first petition (equivalent to Annexure E to the second petition).

7. In exercise of his appellate jurisdiction, respondent No.2 has found fault with the aforesaid order passed by respondent No.1 after remand only on the ground that it travelled beyond the order of remand at Annexure D to the second petition. Since I find that the order at Annexure D to the second petition to the extent it has included in the holding of the father the constructed property contrary to the aforesaid binding Supreme Court ruling, it cannot be upheld in toto. The excess declaration therein will have to be sliced down after excluding from the holding of the father the area represented by the constructed property, that is, 534.40 square meters. If that is so done, the order passed by respondent No.1 after remand at Annexure C to the first petition (equivalent to Annexure E to the second petition) becomes invulnerable or unassailable. The appellate order modifying it by including in the holding of the father the area of the aforesaid constructed property cannot therefore be sustained in law.

8. So far as the order of respondent No.1 in each petition after remand at Annexure C to the first petition (equivalent to Annexure E to the second petition) is concerned, no fault can be

found with it. It is in consonance with the order passed by and on behalf of respondent No.3 of the second petition in exercise of its powers under sec. 34 of the Act at Annexure D thereto to the extent indicated hereinabove. The impugned order at Annexure D to the second petition calls for no interference except to the extent indicated hereinabove as it has clearly been found therein that the land inquestion was purchased in the name of the mother and nowhere it was found mentioned in the document of title that the consideration was from the joint Hindu family funds. This finding of fact is not found or shown to be perverse in any manner.

9. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to the second petition cannot be sustained in law in toto. For the area of 977.32 square meters declared surplus it is to be modified by substituting the area of 437.81 square meters. The order passed by respondent No.1 in each petition after remand at Annexure C to the first petition (equivalent to Annexure E to the second petition) calls for no interference by this court in these petitions. So far as the appellate order at Annexure D to the first petition (equivalent to Annexure F to the second petition) is concerned, it stands modified by upsetting that part of the order by which it has upwardly revised the order passed by respondent No.1 after remand.

10. It may be mentioned at this stage that learned Assistant Government Pleader Shri Patel for the contesting respondents is right in his submission that the petitioners of the second petition have no locus standi to challenge the orders passed against the father. So far as the daughter is concerned, she is not at all affected by the orders in question except to the extent that her so-called share of partition stands obliterated. She had not filled in her form by showing her share in her father's property. She was not a party before respondent No.1 at the time of passing of the order oat Annexure B to the second petition. She would not be justified in claiming the right of hearing before respondent No.3 with respect to the revisional order at Annexure D to this petition. So far as the son is concerned, the permission obtained from him by the communication at Annexure C to the second petition is not upset. The transaction entered into by him with Mohanbhai Premjibhai is also not disturbed. In view of my aforesaid discussion, that transaction will not be disturbed even qua respondent No.3 of the first petition who is respondent No. 4 of the second petition. In that view of the matter, the son also would not be justified in claiming the right of hearing before respondent No.3 of the second petition with respect to the order at Annexure D thereto. If the son and the daughter could not claim any right to hearing as aforesaid, they have no right to challenge the orders passed against their father. However, with

a view to avoiding creation of confusion, I have taken up both these petitions for hearing and disposal together by this common judgment of mine. I have therefore avoided such technicalities to be weighed with me for the purpose of deciding their fate.

11. In the result, both these petitions are accepted to the aforesaid extent. The order passed by and on behalf of the State of Gujarat on 18th June 1980 at Annexure D to the second petition is modified by substituting the area of 977.21 square meters by 437.81 square meters. Similarly, the order passed by the Urban Land Tribunal at Ahmedabad on 20th June 1988 in Appeal No. 24 of 1988 at Annexure D to the first petition (equivalent to Annexure F to the second petition) is also modified by quashing and setting aside that part of the order by which the order passed by the Competent Authority at Rajkot after remand on 29th February 1988 under sec. 8(4) of the Act. The order passed by the Competent Authority at Rajkot at Annexure C to the first petition (equivalent to Annexure E to the second petition) is restored. It is hereby clarified that the holding of the father (the petitioner of the first petition) is declared to be in excess of the ceiling limit by 437.81 square meters. The matter may be remanded to the Competent Authority at Rajkot for preparation of the final statement accordingly after giving an opportunity to the petitioner of the first petition for selection of the land to be surrendered as surplus. It is clarified that the selection to be made by him should not affect the property sold by his son to Mohanbhai Premjibhai and in turn to respondent No.3 of the first petition who is respondent No. 4 of the second petition. Rule issued on each petition is accordingly made absolute to the aforesaid extent with no order as to costs.